Supreme Court, U.S.
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No. 03-251

In The Supreme Court of the United States

CIGNA PROPERTY AND CASUALTY,

Petitioner,

v.

TERESA VILLAR-RUIZ

and

ANTONIO RUIZ,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Florida

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

The Respondent would submit to this Court that the Petitioner's Statement of the Case contains certain omissions which the Respondent believes constitute misstatements of fact that bear upon what issues would properly be before the Court if certiorari were granted.

PROCEEDINGS BELOW

In the Petitioner's Brief at page 5, cursory mention is made about a certain Interpleader action filed by the Petitioner in the U.S. District Court for the Southern District of Florida, Case Number 02-21655 CIV Jordan, and of a concurrent appeal from that case to the Eleventh Circuit Court of Appeals under Case Number 03-10903-B. In order for this Court to have a full understanding of the issues presented, the Respondent would further elaborate on those proceedings. On June 4, 2002, the Petitioner filed a Complaint ostensibly cast in terms of an interpleader action requesting that the U.S. District Court to engage in an interpretation of 33 U.S.C.A. Section 916 with regards to whether or not Antonio Ruiz' benefits were immune from legal process pursuant to state law. The U.S. District Court issued a Show Cause Order on November 5, 2002, indicating that those proceedings should be dismissed in light of the Florida Third District Court of Appeal's decision in the matter of *Cigna Property & Casualty v. Ruiz* 834 So. 2d 234 (Fla. 3d DCA, 2002). By order dated January 21, 2003, the U.S. District Court dismissed the federal case on the basis that the Petitioner submitted the federal question for determination to the state court which was presumptively competent to adjudicate claims arising

under the laws of the United States. Thereafter, the Petitioner filed an appeal to the United States. Court of Appeals for the Eleventh Circuit in case number 03-10903-B. On or about April 9, 2003, Petitioner filed its Initial Brief. The case is scheduled for oral arguments the week of September 22, 2003.

THE REASONS ASSERTED BY THE PETITIONER FOR GRANTING THE PETITION

I. THAT IN APPLYING FLORIDA LAW TO THE LONGSHORE ACT THE FLORIDA COURT DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, AND SHOULD BE, SETTLED BY THIS COURT

The Petitioner misconstrues the actions of the Florida state court when it states that the state court decided an issue of federal law in a manner which conflicts with federal legal authority. In interpreting the application of the non-alienation provisions of 33 U.S.C.A. Section 916, the state court concluded that the Income Deduction Order applied to "on-going child support" obligations of Antonio Ruiz and not to past due arrearages. This distinction was crucial to the analysis since all of the cases relied upon by the Petitioner involved past due arrearages. All the cases relied upon by the Petitioner for the proposition that child support obligations constitute "claims of a creditor", involved situations where the former spouse had obtained a judgment for past due payments. The state court thus reasoned that on-going child support obligations (which were the subject of the Income Deduction Order) were not claims of a creditor as contemplated by 33 U.S.C.A. Section 916.

Furthermore, the state court found that the United States Congress enacted a series of amendments in 1996 to the non-alienation provisions of the Social Security Act which has been held to have impliedly repealed the non-alienation provision of the Longshore Act with regards to child support payments. Therefore, even if the amounts in controversy were considered "claims of a creditor", the U.S. Congress expressly manifested its intention to exclude child support obligations from the purview of the non-alienation provisions. Engaging in an overview of analogous state law, the state court concluded that similar state laws had been likewise amended to move away from archaic concepts of law. In order to understand the rationale for the state court's decision it is necessary to analyze the historical development of the non-alienation provision and the effect of the 1996 amendments.

Before engaging in any analysis of whether or not the non-assign ability provisions of 33 U.S.C.A. Section 916(16) prevents the enforcement of the subject Income Deduction Order, one must as a preliminary matter ascertain if the aforementioned statute even applies to the facts of this case. The statute by its own wording only applies to "claims of creditors" or attachment or execution for "collection of a debt". If the payments required to be made under the Income Deduction Order are not "claims of a creditor" or "collection of a debt", then the statute has no application whatsoever to this case and this Court's analysis concludes at this stage. Although Mr. Ruiz owed approximately $5,000 in arrearages for this child support payments, the Income Deduction Order was not directed to his past due child support payments but rather was directed toward future (and as yet not due) child support obligations. The order clearly provided that the monthly

$628.00 withheld were for "ongoing child support" (R. 4, Page 1, Paragraph 1(a)). None of the payments required to be withheld by CIGNA were intended to pay for his past due arrearages. Thus the monies in question are not "a debt" and the Respondent and her minor son do not stand as "creditors" of Mr. Ruiz. A close scrutiny of the cases cited by CIGNA demonstrate the distinction. In the case of *Thibodeaux v. Thibodeaux*, 450 So. 2d 813, *cert. denied*, 469 U.S. 1114, 105 S. Ct. 800, 83 L. Ed. 2d 792 (1985) which is heavily relied upon by CIGNA, the Court was faced with a situation involving garnishment of past due child support payments of $5,460.00. The Court therein reasoned that past due child support is a debt within the meaning of 33 U.S.C.A. Section 916. Likewise, in the case of *Spitalieri v. Spitalieri*, 156 Misc. 2d 317 (N.Y. Sup. Ct. 1993) also relied upon by CIGNA, dealt with the issue of $10,724.00 in unpaid and past due child support payments. *Spitalieri* at p. 318. The case of *Moyle v. Director Office of Worker's Compensation Programs, et al.*, 147 F.3d 1116 (9th Cir. 1998) also dealt with garnishment of disability payments to satisfy delinquent spousal support payments. Since the Income Deduction Order issued by the state trial court was not directed towards Mr. Ruiz' past due child support payments but rather was directed to his future child support obligations, the non-alienation provision of 33 U.S.C.A. Section 916(16) does not even apply.

Whether monies or benefits can be subject to legal process is to be determined in accordance with state law. *DeTienne v. DeTienne*, 815 F. Supp. 394 (Dist. Ct., So. Dist. of Kansas, 1993). In the *DeTienne* case the U.S. District Court was called upon to decide if social security disability benefits were subject to garnishment for payment of child

support obligations. The court noted that whether the benefits were subject to legal process was to be determined in accordance with Kansas state law and in applying Kansas state law held that the benefits in question were subject to garnishment. Thus, the issue of whether the benefits involved herein constitute a "debt" is determined under Florida law. In the case of *Bryant v. Bryant*, 621 So. 2d 574 (Fla. 2nd DCA, 1993) the court was faced with a question of first impression: Whether workman's compensation benefits are exempt from claims for child support? In citing a number of cases evidencing the views of the great majority of courts in the country, the Florida Second District Court of Appeals stated that a child support obligation is not a debt or a claim of a creditor. *Bryant* at p. 575. The court went on to hold that the non-alienation provision in the Florida Workman's Compensation Statute, Section 440.22 (which is identical to the non-alienation provision in 33 U.S.C.A Section 916(16)) did not operate to shield such benefits from execution for payment of child support obligations. Florida likewise amended of the non-alienation provision of F.S. Section 440.22 to permit attachment for child support purposes. Even if on-going (and as yet not due) child support obligations are considered a debt, the Respondent respectfully submits that 33 U.S.C.A. Section 916(16) does not operate to bar enforcement of the Income Deduction Order. The cases relied upon by the Petitioner in support of its position were decided prior to the 1996 amendment to the non-alienation provisions of the Social Security Act. The *Thibodeaux* case was decided in 1985; the case of *Ridgeway v. Ridgeway*, 454 U.S. 46, 102 S. Ct. 49, 70 L. Ed. 2d 39 (1981) was decided 15 years prior to the amendment; and *Spitalieri* was decided in 1993. In 1996 Congress amended 42 U.S.C.A. Section 659(h)(1)(A)(iii) to provide that Workman's Compensation

Benefits are subject to enforcement for child support obligations. Thereafter, 5 C.F.R. Section 581.103(c)(4) was enacted which specifically provided that benefits received under the Longshoremen's & Harbor Worker's Compensation Act were subject to garnishment for purposes of child support obligations. The state court correctly interpreted these provisions as repealing the non-alienation provisions of 33 U.S.C.A. Section 916(16) as it relates to child support obligations.

After the enactment of the aforementioned statutory changes, the *Moyle* case came before the courts on the issue of whether the non-alienation provisions of the Longshoremen & Harbor Worker's Compensation Act had been repealed by the later enacted amendments to the Social Security Act. The court held that Congress manifested a clear intent to repeal the non-alienation provisions in 33 U.S.C.A. Section 916(16). The Petitioner seeks to distinguish *Moyle* and the amendment to 42 U.S.C.A. Section 659 on several grounds:

- that the amendment to 42 U.S.C.A. Section 659 was intended to apply to child support obligations based upon monies due from, or payable by, the United States . . . (Petitioner's brief at p. 10)

- that the benefits herein involved are payments made by the original employer/carrier and hence the holding in *Moyle* is inapplicable.

The court in *Moyle* engaged in an exhausting review of the legislative history surrounding the 1996 amendment to 42 U.S.C.A. Section 659. In quoting from the legislative history, the court in *Moyle* noted that " . . . this report also states that the Social Security Administration Garnishment provision would override provisions in various social

insurance or retirement statutes which prohibit attachment or garnishment. This statement demonstrates that Congress did envision the Social Security Administration Garnishment provisions as an implied repeal of statutes similar to the LHWCA". The Petitioner attempts to distinguish *Moyle* by arguing that the benefits due to Mr. Ruiz are not being paid from the Special Fund (as in *Moyle*), and rather, by CIGNA in place of the employer, hence the non-alienation provisions of 33 U.S.C.A. Section 916(16) shield the payments from the Income Deduction Order. Such a narrow interpretation is not justified nor reasonable.

The definitions contained in 42 U.S.C.A. Section 662 explain the intent behind the scope of the language contained in Section 659(c). As the Court pointed out in the *DeTienne* case, Section 662(f) defines "renumeration" to include periodic benefits or other payment to such an individual under the insurance system established by Title II (42 U.S.C.A. Section 401 et seq.) *DeTienne* at p. 396. The Court's interpretation was further supported by the interpretation of the Social Security Administration in Social Security Rulings which provided that Social Security Benefits are subject to legal process to enforce child support obligations. Id.

A clear interpretation of all of the foregoing authorities leads to the inescapable conclusion that benefits due under various federal social insurance programs are intended to be subject to legal process for the enforcement of child support obligations under the 1996 amendment to 42 U.S.C.A. Section 659.

CIGNA's very narrow interpretation would inevitably lead to an equal protection problem. CIGNA is asking the

Court to create two classes of individuals through judicial fiat. One class would involve benefits received from the U.S. Government or a third party which could not avail themselves of the non-alienation provisions of 33 U.S.C.A. Section 916(16) and another class of individuals who receive first party benefits from a private carrier which could not avail themselves of the protection. However, as the state court correctly pointed out, 5 C.F.R. Section 581.101 was promulgated in order to treat private party payments the same as government payments and avoid having two classes of persons. This issue was directly addressed in the *Moyle* case where the Court stated that the Social Security Garnishment provision does reach any payments made pursuant to federal law to private individuals. *Moyle* at p. 1123 citing *DeTienne*.

Contrary to the Petitioner's arguments, the state court's decision was entirely consistent with federal law and similar state law. The United States Congress manifested a clear intent to repeal the non-alienation provisions in various federal insurance programs including the Longshore Act, with respect to child support obligations. Consistent with Congress' express intent, the Ninth Circuit Court of Appeals reiterated the congressional intent in its decision in the *Moyle* case. The Respondent respectfully submits that there is no compelling need for guidance from this Court on this issue since there are no diverging decisions by various courts. Furthermore, current Florida law on the issue of whether child support obligations are "claims of creditors" is entirely consistent with the 1996 congressional amendment and subsequent federal cases which sought to remedy archaic laws and which recognized the unique position of child support obligations in modern society. In conclusion, and rebutting

the Petitioner's assertions to the contrary, there **is** (emphasis added) uniformity between state and federal laws on this issue. As such, there is no need, compelling or otherwise, for this Court to entertain the Petitioner's petition and resolve a non-existent problem.

II. THAT THE THIRD DISTRICT DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT

The Petitioner's reliance on the case of *Ridgeway v. Ridgeway*, 454 U.S. 46, 102 S. Ct. 49, 70 L. Ed. 2d 39 (1981) is totally misplaced. The *Ridgeway* case actually stands for the proposition that state laws must give way to CLEARLY CONFLICTING (emphasis added) federal enactments. As previously discussed, there is no clear conflict between federal law and Florida law on this issue. In fact, the contrary is true. Likewise, before this Court can be called upon to utilize the supremacy clause of the federal constitution to override state law, there must exist a clear conflict which rises to the level of doing "major damage to clear and substantial federal interests." *United States v. Yazell*, 382 U.S. 341, 352, 86 S. Ct. 500, 507, 15 L. Ed. 2d 404 (1966) quoted in *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581, 99 S. Ct. 802, 808, 59 L. Ed. 2d 2 (1979). The *Ridgeway* and *Hisquierdo* cases were decided prior to the 1996 congressional amendments to The Social Security Act repealing non-alienation provisions in a host of federal insurance programs as they relate to child support obligations. The "conflicts" that existed between state and federal laws at the time that *Ridgeway* and *Hisquierdo* were decided no longer exist by virtue of the amendments to 42 U.S.C.A. Section 659(h)(1)(A)(iii) and the enabling

statute enacted thereafter. 5 C.F.R. Section 581.103(c)(4). The concerns expressed by the Petitioner that state laws will emasculate federal law are simply illusory.

CONCLUSION

Based upon the foregoing discussion, the Respondent respectfully submits that this Honorable Court should not exercise its discretionary jurisdiction in this matter and decline to entertain this case.

Respectfully submitted,

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